

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

DR. ROBERT W. MALONE)

Plaintiff,)

v.)

Case No. 3:22-CV-00063-NKM

PETER R. BREGGIN, MD *et al.*)

Defendants.)

**PLAINTIFF’S RESPONSE TO SHOW CAUSE
AND MOTION TO EXTEND TIME FOR SERVICE**

Plaintiff, Dr. Robert W. Malone (“Plaintiff” or “Dr. Malone”), by counsel, pursuant to W.D. Va. Civ. Rule 11(c) and Rule 4(m) of the Federal Rules of Civil Procedure (the “Rules”), hereby responds to the Court’s Show Cause Order and moves the Court to extend the time for service on defendants, Peter R. Breggin, M.D. and Ginger Ross Breggin (collectively, the “Breggins”) and Dr. Jane Ruby (“Ruby”).

1. On October 30, 2022, Dr. Malone filed his complaint against the Breggins and Dr. Ruby. [*ECF No. 1*].¹ In his complaint, Dr. Malone asserted claims for defamation (Count I), defamation by implication (Count II) and insulting words pursuant to 8.01-45 of the Virginia Code (Count III).

2. On October 30, 2022, counsel for Dr. Malone emailed counsel for the Breggins, providing a copy of the complaint and requesting acceptance of service. On

¹ Dr. Malone intends to dismiss his claims against America Out Loud and Red Voice Media pursuant to Rule 41(a)(1)(A)(i).

November 11, 2022, counsel for Breggins (Cameron Beck, Esquire (“Beck”) of the law firm McCandlish Holton) agreed to accept service and requested a Waiver of Service for Summons form.

3. On October 30, 2022, counsel for Dr. Malone also contacted counsel for Ruby, providing a copy of the complaint and requesting acceptance of service. On November 11, 2022, counsel for Ruby agreed to accept service and requested a Waiver.

4. On February 1, 2023, counsel for Dr. Malone emailed Notice of Lawsuit and completed Waivers to counsel for the Breggins and Ruby.

5. Attorney Beck advised for the first time that he no longer represented the Breggins, and to direct the Waivers directly to the Breggins. On February 2, 2023, counsel for Dr. Malone emailed the Waivers directly to the Breggins. Ginger Breggin acknowledged receipt of the Waivers, and advised that the Breggins were “consulting with an attorney.”

6. On February 2, 2023, counsel for Dr. Malone followed-up with counsel for Ruby about the status of the Ruby Waiver. Counsel for Ruby advised that he needed to “review and sync with my client asap.” Counsel for Dr. Malone and counsel for Ruby also spoke by phone. Counsel for Dr. Malone advised that the Court had issued a 90-day notice, and that the Waivers needed to be returned promptly. Counsel for Dr. Ruby had a trial, but indicated he would get back in touch by the “end of the week”.

7. On February 7, 2023, Ginger Breggin advised that the Breggins had “hired a new attorney in Virginia and will be able to respond after we meet with him in the next few days.”

8. On February 15, 2023, having not received the signed Waivers, counsel for Dr. Malone contacted the Breggins and requested the name of their Virginia attorney. Counsel for Dr. Malone also contacted counsel for Ruby and requested the signed Waiver.

9. Neither the Breggins nor any attorney responded.

10. Counsel for Ruby stopped communicating and never returned the signed Waiver.

11. Counsel for Dr. Malone did not pursue means to personally serve the Breggins and Ruby. Rather, counsel relied in good faith on the express representations of counsel for the Breggins and counsel for Ruby that they would execute and return Waivers of Service of Summons forms.

12. Pursuant to Rule 4(m), Dr. Malone requests the Court to extend the time to serve the Breggins and Ruby by 30 days.

13. A proposed Order is attached as Exhibit "A".

WHEREFORE, Plaintiff, Dr. Robert W. Malone, requests the Court to extend the time for service to and including March 27, 2023.

DATED: February 23, 2023

Signature of Counsel on Next Page

DR. ROBERT W. MALONE

By: /s/ Steven S. Biss

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Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2023 a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to counsel of record and all interested parties receiving notices via CM/ECF.

By: /s/ Steven S. Biss

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